

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	CG Docket No. 17-59
Advanced Methods to Target and Eliminate)	
Unlawful Robocalls)	
)	

**COMMENTS OF FIRST ORION CORP.
ON PUBLIC NOTICE DA 18-842
(CONSUMER AND GOVERNMENTAL AFFIAR BUREAU SEEKS TO REFRESH
THE RECORD ON ADVANCED METHODS TO TARGET AND ELIMINATE
UNLAWFUL ROBOCALLS)**

September 24, 2018

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INTRODUCTION

Scammers have polluted the voice channel for the legitimate members of the ecosystem:

- Consumers are being scammed out of hundreds of millions of dollars each year and have been conditioned to not answer the phone unless they know who is calling.¹ They want choices that provide protection from fraudsters and help them trust their phones again.
- Service providers are required to deliver billions of scam calls and other abusive calls the recipients don't want. This increases provider costs and negatively impacts consumers.
- Call originators making legitimate and wanted calls are seeing their business impacted by lower answer rates, driven by consumer distrust of any call they don't recognize.

We applaud the Federal Communication Commission (the "FCC" and "Commission") in paving the way for certain forms of provider-initiated blocking while maintaining a light regulatory touch relative to call identification and subscriber-initiated blocking. In addition, the Commission and the Federal Trade Commission ("FTC") have aggressively enforced the various applicable laws and worked hard to educate consumers about how to best protect themselves.

Despite our collective efforts, scam calls are growing at an alarming rate.² The fraudsters are aggressive and very sophisticated, evolving their practices to avoid being blocked or labeled. As a result, our industry finds ourselves in an arms race combatting phone scams, not a marathon

¹ An online survey just conducted by First Orion found that 72% of consumers do not answer calls when they cannot identify the calling party number; *See also* Software Advice, Local Presence Dialing Survey. <https://www.softwareadvice.com/resources/local-presence-dialing-survey/> (84% of unknown calls go unanswered).

² *See* Report Summary, *Scam Call Trends and Projections Report*, First Orion Corp. (September 12, 2018) at <https://firstorion.com/nearly-50-of-u-s-mobile-traffic-will-be-scam-calls-by-2019/>

with a finish line. We will be in the race until we make phone scams un-profitable for the scammers.

As has been repeatedly and clearly stated by the Commission, call management tools, such as those First Orion offers, are a key part of the solution for consumers (as opposed to part of the problem, as posited by some commenters), especially with regard to fraudulent calls:

“[T]he considerable interest in call blocking as a consumer self-help tool complements our TCPA decisions that can only stop unwanted calls from those who are deterred by TCPA liability. Call-blocking technology offers the possibility of stopping calls from those who seek to defraud consumers, oftentimes specifically targeting vulnerable consumers. Our decision here gives consumers the right to help protect themselves and seeks to create a regulatory environment where such solutions can grow and improve.”³

We encourage the Commission to maintain its focus on consumer protection and consumer choice by maintaining its support for certain forms of provider-initiated blocking as well as for call identification and subscriber-initiated blocking tools.

Introduction to First Orion Solutions

First Orion provides consumers the best information available about who is calling and why and allows the subscriber to decide how to handle the call. Consumers can make the decision to simply not answer the call, block the calling number, or with certain services block all future calls by category, including calls labeled Scam Likely, Telemarketer, Survey and other similar categories.

Working in conjunction with First Orion, T-Mobile is the prime example of a provider aggressively protecting its subscriber base from illegal calls.⁴ This service launched in Q1 of

³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd. 7961¶ 163 (2015) (“TCPA Order”).

⁴ We are also proud of our relationships with Boost Mobile and TracFone and applaud their efforts to provide protection from illegal and unwanted calls for pre-pay subscribers. As with

2017 and is now provided automatically and free of charge to over 58 million T-Mobile subscribers. The service displays the identifier “Scam Likely” for inbound calls that we have categorized as fraudulent in nature. We routinely identify over 500 million calls per month with a cumulative total of over 6.5 billion calls identified as Scam Likely or blocked by subscribers since the launch, all with a reported error rate significantly less than 1.0%. Subscribers who chose the option to block all calls that are labeled Scam Likely represent about 6% of subscribers with the service.

First Orion’s scam identification solution is ideally deployed by providers with our leading Caller ID solution, AccuName. Our service provides the name of calling parties a higher percentage of the time than competitive solutions and overrides the name with our analytics when we have identified a fraudulent call. Service providers therefore ensure the consumer is being provided the best possible information about who is trying to reach them—and when to be cautious of the call. While not offering as high a level of scam protection as our in-network solutions, this service option is a particularly appealing answer for wireline providers where Caller ID Name (or CNAM) is more prevalent.⁵ First Orion’s solutions create a balance between protecting consumers against illegal calls and the interests of legitimate callers--while appropriately putting consumers in control of managing their preferences for how to handle illegal and unwanted calls.

our Privacy Star-branded applications, their applications are available in app stores for a small monthly fee (as low as \$.99).

⁵ Deploying such services is also consistent with Commission acknowledgement that these services will continue to evolve and improve. *See* TCPA Order ¶ 162 (“We therefore disagree with commenters who suggest that the Commission should avoid clarifying carrier obligations until all voice service is Internet Protocol. While we recognize that the IP transition presents the possibility of improved call blocking that results from improved Caller ID, robocalls present a current and significant problem for consumers. We take action today to encourage increased use of call-blocking technology to help consumers and see no need for delay.”).

First Orion Call Identification Methodology

As noted in the Public Notice, while call identification and subscriber-initiated blocking are outside the scope of these proceedings, in past comments First Orion has been as transparent as possible about our methodologies for identifying illegal calls in an attempt to inform the Commission as well as call originators who are concerned about potential impacts on their business. As the Commission acknowledges, however, there are real concerns over publicly disclosing too many details about the criteria, as disclosure of specific methodologies provides the intelligence that scammers need to circumvent them.

That said, we note that some of the criteria enumerated by other commenters is consistent with certain data points First Orion uses as part of our analytics. Among other call-related information, we too evaluate large bursts of calls from a particular caller in a short timeframe, short call duration, low call completion rates, spoofing patterns, consumer-blocks and consumer-complaint ratios, as well as dozens of other data points relating to calling parties and the purposes of the calls being made. And, in response to a specific question posed in the Public Notice, all intelligence we have about a call is used in combination, supporting more accurate identification. It cannot be emphasized enough that a single data point can rarely be used to identify a legal or illegal call. It is the holistic use of many data points that enables accurate identification. For example, a large burst of calls from a particular caller in a short time frame is less concerning if the same type of burst occurred 30, 60 and 90 days prior and/or is associated with a certain category of caller—political or charitable organization for example, conducting seasonal calls.

We have demonstrated that in fact identifying illegal calls can be done reliably with the right analytic approaches and a commitment to continually evolving the intelligence and analytics, much in the same way we must update our computer virus protection to combat new cyber assaults. Our team of experienced data scientists makes small improvements to our analytics methodologies every day with more substantial revisions every few months. Certain manual components of the corroborative process equally are evolving, with test calls being just one example.

As noted in previous filings, we are actively deploying yet another significant evolution of our scam protection solution that analyzes the “fingerprints” of each call, in addition to the characteristics of the calling number. This advancement will enable a higher degree of scam identification with increased accuracy, particularly relating to identifying illegal spoofing of legitimate phone numbers.

Illegal spoofing is on the rise, and it is always problematic because it encourages the subscriber to answer the call. However, it is particularly problematic when a legitimate number is spoofed by scammers and there are both legitimate and illegal calls being made from the same number, possibly at the same time. This means the analysis identifying illegal calls cannot accurately be done at a phone number level, but instead must be done on a call by call basis. This requires more knowledge about who legitimately owns the number as well as access to in-network signal data, not just data at a phone number level, such as white or black lists provide.

First Orion also sees an increasing number of scammers spoofing a legitimate number or a number with the same area code and prefix (or a portion thereof – 3, 4, or 5 digits) as the called party and randomly generating the last 4 digits, known as neighborhood spoofing. Here too, access to in-network signal data is critical to properly identifying these calls.

Imposing New Rules on Call Labeling and Subscriber Blocking Would Be Outside the Scope of the FNPRM, and Inconsistent with the Commission’s Focus on Competition and its Light Touch Regulatory Approach

The Commission’s stated focus in the Public Notice DA-18-842 is on voice service provider blocking of illegal calls without consumer consent or opt in⁶ and we applaud the efforts of the Commission to find additional acceptable ways to enable further provider-initiated blocking beyond that authorized in the November Order.⁷

However, the Commission should resist attempts by commenters in this proceeding to conflate provider-initiated blocking with caller identification and subscriber-initiated blocking solutions that are beyond the scope of the FNPRM. Caller identification solutions and subscriber-initiated blocking offer welcomed relief to consumers that can be more widely deployed and adopted than provider-initiated blocking, while allowing consumers to retain control over how they handle incoming calls. The Commission should continue to encourage investment and innovation in this comparatively new and still-developing sector, in both the landline and wireless contexts.

As the Commission is aware, call identification, also known in the industry as “tagging” or “labeling,” is not the same as call *blocking*. The Commission has long held that *provider*-initiated blocking is generally an unjust and unreasonable practice under Section 201(b) of the Communications Act, with certain exceptions.⁸ This call completion principle is what

⁶ Public Notice, Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59 (Aug. 10, 2018), n 1.

⁷ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd. 9706 (2017). Throughout, we refer to the Report and Order portion of this document as “the November Order” and the Further Notice of Proposed Rulemaking portion of this document as the “FNPRM”).

⁸ *Id.* ¶ 8.

necessitated the Commission’s November Order. Because the Commission generally prohibits provider-initiated blocking, providers needed an exemption from that general rule before blocking calls from unassigned numbers or numbers on a do-not-originate list without first obtaining subscriber consent.⁹ The Commission then appropriately issued its FNPRM to ensure that it correctly tailored this new exception from the call completion rules. In other words, the FNPRM asked how the Commission should *deregulate* provider-initiated blocking.¹⁰

With call identification (such as the Scam Likely designation), a provider does not block a call until the subscriber requests it. Rather, the call rings through to the call recipient, and either the provider or a third-party application provides the call recipient with additional information that allows the call recipient to determine whether to answer the call or not. If the call recipient chooses to not answer the call, the caller still has the opportunity to leave a message in most cases.

The Commission has never considered calls that ring through to the called party to negatively implicate its call completion rules.¹¹ Instead, when calculating call completion rates, the Commission considers calls that ring through, but are unanswered, as completed.¹²

Moreover, the Commission has repeatedly voiced its support for subscriber-initiated blocking, including category blocking like blocking all calls identified as scams, writing:

⁹ See 32 FCC Rcd. at 9726 ¶ 60.

¹⁰ See FNPRM ¶¶ 57-58.

¹¹ See, e.g., *Blocking Interstate Traffic in Iowa*, Memorandum Opinion and Order, 2 FCC Rcd. 2692 (1987) (addressing instances where a carrier prevented calls from ringing through); Access Charge Reform, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923 ¶ 24 (2001).

¹² See, e.g., *Rural Call Completion*, 32 FCC Rcd. 4980 ¶ 6 (2017) (“The call completion rate is the rate of call attempts to assigned numbers that are completed and is calculated as follows: Call Completion Rate = (Answered Calls + Busy Call Attempts + *Ring No Answer Attempts*) / (Total Call Attempts — Call Attempts to Unassigned Numbers).” (emphasis added)).

“[We] affirm that nothing in the Communications Act or our rules or orders prohibits carriers or VoIP providers from implementing call-blocking technology that can help consumers.”¹³

And:

“We clarify that services that allow consumers to designate categories of incoming calls (not just individual telephone numbers) to be blocked, such as “telemarketer” category, also constitute consumer choice within their right to block calls. Limiting that right to individual numbers would leave consumers without the ability to block most unwanted calls. While individual number blocking is useful—e.g., to avoid harassing calls from known individuals—it cannot help consumers avoid mass unsolicited calling, such as by telemarketers or scammers, known to cause consumers problems.”¹⁴

Put another way, call identification services do not implicate the Commission’s call completion rules, because “tagged” or “labeled” calls are still completed. Subscriber-initiated call blocking does not implicate the Commission’s call completion rules because the rules only prevent provider-initiated blocking. Thus, imposing notions such as call intercept messages,¹⁵ mandatory inquiry mechanisms,¹⁶ and uniform categories of calls¹⁷ would not be deregulatory,

¹³ TCPA Order ¶ 152.

¹⁴ TCPA Order ¶ 157.

¹⁵ See First Orion Reply Comments at 2 (“Commission precedent does not require automatic notification for blocked calls.”). We also reiterate the concerns over alerting scammers with the implementation of such indicator tones. Further, it should be noted that in implementing blocking authorized by the Commission (both network blocking and subscriber blocking), terminating providers are attempting to protect networks and consumers from unwanted traffic over which they have limited control. Imposing additional requirements seems almost punitive. Any consideration of indicator tones must also involve an analysis of the burdens placed upon service providers to implement such requirements, particularly the terminating provider. Lack of signaling alignment between originating and terminating entities, impact on signaling resources and network congestion need be considered for any such proposal to be seriously evaluated.

¹⁶ As discussed at 12-13, service providers and analytics companies have already launched much of functionality requested by commentators.

¹⁷ Uniform call categories would actually create more issues from a practical standpoint: it is fairly easy to ascertain the “labels” or categories used by the most prevalent call management solutions (these also being the service providers and analytics companies most engaged with the call originators). Standardizing would make it more difficult for a call originator to know which company and remediation platform to engage. Standardizing would also not provide any benefit

but would amount to regulating previously unregulated technologies, would not improve the choices and rights of the consumer, and would be contrary to the Commission's previous reliance on competition among service providers to address concerns over false positives.¹⁸

Call Management Services Should Actively Address False Positives with Call Originator Participation

While call identification services present a very good solution for informing consumers about who is calling, they admittedly will not operate with an error rate of absolute zero¹⁹. First Orion continually improves its analytics, prides itself on its accuracy, and competes with other services on its ability to correctly identify calls. Nonetheless, sometimes First Orion is unable to identify

to the consumers as they only actually “see” the one variation of the label their chosen provider utilizes.

¹⁸ The primary rationale for any of these requirements proposed by call originators is concern over false positives. As evidenced throughout the record in this proceeding, First Orion, as well as other analytics companies and providers, and call originators are working well together to address concerns over false positives; however, the Commission, while exploring the concerns and remedies around false positives, has also focused on the consumer's ability to move to a competitive service over concerns of false positives: “As long as the carrier offering its own product or coordinating with another product provider offers adequate disclosures, such as that the technology may inadvertently block wanted calls, consumers have the right to choose the technology—whether it is offered by a carrier, VoIP provider, or third party as part of a carrier service. The carriers' current blocking options and third-party options alike are subject to problems caused by Caller ID spoofing, yet those services appear popular with consumers. Moreover, consumers can easily drop those services or choose services that send a call directly to voicemail, giving them the level of error they are willing to accept.” (emphasis added). TCPA Order ¶ 157.

¹⁹ Inaccurate labeling does pose some risk to calling parties, but not as great a risk as blocking. The called party sees the label and has a choice. Only 6% of subscribers who see “Scam Likely” labels turn on the feature to block all “Scam Likely” calls. Furthermore, 10% of subscribers actually call the “Scam Likely” labeled number back within a 24-hour period. We can conclude from this behavior and other consumer feedback about the “Scam Likely” label that subscribers really like seeing the label. Blocking without a subscriber request makes it harder for the consumer to know what's happening since the subscriber must go to their call log to see what has been blocked. While some subscribers likely prefer to not be bothered at all, we believe that labeling coupled with subscriber-initiated blocking both informs and empowers the consumer.

a scam call. Indeed, the majority of the feedback we get from consumers tells us that we missed a call that was a scam. Notwithstanding, with any solution that attempts to identify illegal calls, there can be false positives as well. Our experience with over 6.5 billion calls identified as Scam Likely is that it is exceptionally rare for our solution to label a legitimate call as Scam Likely, and in those rare cases, our solution offers easy remediation, as described below.

It is important not to let the perfect be the enemy of the very good when protecting consumers from illegal and unwanted calls. In fact, the Commission has previously recognized that, “the fact that current . . . technology is not perfect does not prevent telephone carriers from being able to offer it to their customers.”²⁰

Still, recognizing the interests of legitimate calling parties and the importance of wanted calls, First Orion works with call originators and consumers, to actively engage both groups and use the information gathered to improve call identification and blocking accuracy. Consumers who use our mobile applications may provide feedback about whether calls are mislabeled. T-Mobile customers can provide feedback about First Orion’s call management service through the T-Mobile website.

Additionally, First Orion launched www.CallTransparency.com, an easy-to-use online portal that legitimate call originators can use to identify themselves, the numbers they use and provide guidance on how they use them. At this portal, legitimate call originators sign up and provide their phone numbers with an industry code, reason for the call, and a preferred caller ID name. First Orion then authenticates the originator and its numbers, thereby keeping the scammers out. With authenticated and registered numbers, First Orion will no longer label legitimate calls from

²⁰ TCPA Order ¶ 160 (alterations and quotation omitted).

these numbers as Scam Likely.²¹ However, illegal calls from that number will still be labeled Scam Likely.

First Orion also offers a related service, Perception (formerly known as Number Reputation Service), that informs call originators as to how their calling numbers are perceived by consumers so they can better evaluate the practices of their call centers and proactively avoid improper labeling in the future.

By engaging with these platforms call originators learn valuable information about numbers that may have been incorrectly labeled or blocked resulting in some consumers not answering their calls. It is equally plausible in such instances, and valuable information for the call originators, that numbers had been spoofed by a scammer thus being appropriately blocked or labeled for some calls for some period of time. In addition to understanding whether some legal calls had been mislabeled, call originators can utilize the feedback provided by products such as Perception to address any potential issues with their call center practices²².

We value the working relationship that has evolved with the call originator industry and appreciate the efforts of organizations such as PACE and many of its members that engage with us and other analytics companies in honest (and sometimes tense) discussions about how best to

²¹ Note that First Orion does continue to use analytics to identify illegitimate calls originating from a registered number, including when a third party has spoofed the registered number for fraudulent purposes. Where First Orion identifies misuse of a registered number, it may still label such a call as Scam Likely.

²² First Orion also takes other common-sense measures to help ensure quick resolution of errors. For example, First Orion routinely buys relevant ad terms related to “Scam Likely” so consumers and call originators who may have no other context for call labeling and blocking can reach important information addressing their questions or concerns about our solution with just a few clicks.

address concerns of all the concerned parties.²³ As for the impact of false positives on the interests of call originators, as we strive to improve our processes and minimize any issues, we also continue to encourage additional collaboration and research to better understand why consumers are not answering their phones, rather than the ongoing reliance by some upon purely anecdotal evidence. This discussion is currently complicated by a lack of data, as well as some call originator misunderstandings around important key metrics, such as the adoption levels of Caller ID/Name in the wireless ecosystem and call management solutions generally.

Efficacy of Whitelists

The Commission should not require providers to complete all calls originating from a number on a “white list.” Our experience shows that fraudsters often target high volume legitimate numbers to “blend in” with legitimate calls. This is often done for short periods of time such as the busiest hours of a day. A comprehensive call management solution may include white listing intelligence, but white listing in isolation is not usually effective.

As with most other efforts for industry wide solutions, industry is best suited to establish standards that providers might adopt, such as a timeframe for adding numbers to a white list, and best practices for sharing the data with other providers. Industry could also consider general guidance on what situations would result in a number being suspended from the white list based on bad behavior of the legal owner or repeated illegal spoofing. STIR/SHAKEN standards for authentication could also be used as one criteria for validating subscribers wishing to put their numbers on a white list.

²³ See Comments of Professional Association for Customer Engagement, CG Docket No. 17-59, DA 18-638, at 3 (July 20, 2018).

While white lists can provide a helpful piece of intelligence, the Commission should continue to encourage industry to be innovative in developing other mechanisms to protect legitimate callers.

Call Originators Should Report Erroneous Provider-Initiated Blocking Directly to Providers or an Industry Developed Resource

To get the quickest resolution, call originators should report erroneous provider-initiated blocking directly to providers or to an industry-developed resource. It is unnecessary for the Commission to prescribe any sort of resolution process where the call originators report suspected incidents of erroneous provider-initiated blocking.²⁴ Having call originators liaise directly with providers and their partners will best ensure efficient problem solving in instances where a provider blocks a legal call.

First Orion agrees with the Commission that providers should “cease blocking calls as soon as is practicable upon a credible claim by the caller that its calls are being blocked in error.”²⁵ The Commission should not, however, mandate specific time periods or specific standards for judging whether a claim is credible.

The FCC should not develop a static definition of what constitutes a credible request to cease provider-initiated blocking²⁶ or a specific time limit on evaluating a claim’s credibility. Scammers are constantly changing tactics. Providers may need to shift how they evaluate credible “unblock” requests in response to evolving practices. The Commission is not in the best position to make such changes quickly.

²⁴ See FNPRM ¶ 57.

²⁵ *Id.* ¶ 58.

²⁶ *Id.*

After determining that an “unblock” request is credible, providers should be allowed to unblock the number within a reasonable period of time, without specific Commission mandates. Customer satisfaction issues, as well as regulatory and commercial concerns, provide sufficient incentives for provider attention to remediating any erroneous blocking. For example, with labeling, First Orion typically corrects labeling errors within 24 hours, often within just a few hours.

Support for STIR/SHAKEN & Traceback and other Carrier-Centric Initiatives

As many have noted STIR/SHAKEN will not be a “silver bullet” or a “panacea” in the quest to address scam-related and other illegal and unwanted calls. That said, First Orion supports the commitment by many in the industry to implement the technology and has developed the necessary capabilities to utilize verification data points as part of analytics²⁷.

Since First Orion is not a carrier we are not actively engaged in the industry traceback efforts led by US Telecom. However, we are familiar with its successes and applaud the efforts of its dedicated members. Given our role in the ecosystem we also note a growing industry concern around the provision of high-volume services to potentially illegal callers and other issues created within the wholesale industry in particular. Addressing these issues could have a significant impact on fraudulent call volumes.

CONCLUSION

The Commission has in recent years very much appreciated the urgency of addressing the issue of fraudulent (as well as other illegal and unwanted) calls. In 2015, the Commission saw

²⁷ See e.g., Comments of the US Telecom Association, CG Docket No. 17-59, DA 18-638, at 4-5 (July 20, 2018).

“no need for delay” while encouraging increased use of call blocking technology chosen by consumers. The Commission urged the creation of the Robocall Strike Force and in the November Order authorized specific categories of provider-initiated blocking. The Commission has also consistently recognized the complexities of identifying fraudulent calls (part of the rationale for limited provider blocking) but has elected to allow consumer choice as the deciding factor in addressing false positives or other features of call management services.

Indeed, with the problem still uncontained, now is certainly not the time to create delays in the deployment of popular call identification and subscriber blocking services. We encourage the Commission to reiterate its commitment to fostering the development of industry-led solutions, rather than requiring carriers or their partners to adopt specific, static criteria and measures to prevent illegal calls—measures likely to be outpaced by the ingenuity of fraudsters and criminals.

Finally, good policy in this ecosystem also requires focus on consumer education and clearing regulatory hurdles that impede the rollout of robust call identification solutions for all consumers, including landline subscribers — not imposing new regulatory requirements on these services.